

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.784 OF 2014

Dr. (Mrs.) Usha Madhukar Samel and others ... Applicants

Vs.

Nishikant Chandrakant Karnik and others ... Respondents

Mr. G. S. Godbole, Senior Advocate i/b. Ms Manjiri S. Parasnis for Applicants.

Mr. Pradip R. Kadam for Respondents No.2, 3, 5(C) and 6.

CORAM : R. G. KETKAR, J.

Reserved on : JUNE 13, 2016

Pronounced on : JUNE 23, 2016

ORDER :

Heard Mr. Godbole, learned Senior Counsel for applicants and Mr. Kadam, learned Counsel for respondents No.2, 3, 5(C) and 6 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicants have challenged the judgment and decree dated 08.04.2014 passed by the appellate Court of the Court of Small Causes at Mumbai in Appeal No.426 of 2000 arising from the judgment and decree dated 24.12.1999 passed by the learned Judge presiding over Court Room No.11 of the Court of Small Causes at Bombay. By the impugned order, the appellate Court allowed the appeal preferred by the respondents and quashed and set aside the judgment and decree dated 23/24.12.1999 passed by the learned trial Judge and decreed the Suit by directing the applicants to handover vacant and peaceful possession of blocks No.1 and 4 on the ground and first floors respectively of building known as "Park View" situate at 71, Ranade Road, Mumbai - 400 028 (for short 'suit premises') within a period of three months. The parties

shall hereinafter referred to as per their status in the trial Court. The relevant and material facts giving rise to filing of the present Civil Revision Application, briefly stated, are as under:

3. Plaintiffs have instituted Suit against Dr. Yamunabai Jaiwant (since deceased), hereinafter referred to as original defendant, for recovery of suit premises, inter alia, on -

- a. change of user [Section 13(1)(k)] of block No.1 from residential to commercial;
- b. unlawful subletting [Section 13(1)(e)] of block No.1;
- c. bonafide requirement [Section 13(1)(g)] as also
- d. nuisance and annoyance under Section 13(1)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

4. The Suit was instituted in April, 1974. In paragraph 3 of the plaint, plaintiffs have set out the grounds of eviction. In paragraph 4 of the plaint, plaintiffs asserted that by Advocate's notice dated 01.11.1973, they duly terminated the tenancy of the original defendant. The said notice was duly served on the original defendant on 08.11.1973.

5. Original defendant resisted the Suit by filing points of defence on or about 20.01.1975. It was inter alia contended that the Suit is bad in law and is not maintainable for non-joinder of proper and necessary parties; there is no cause of action for instituting the Suit, the Suit is not maintainable unless it relates to two different premises. Plaintiffs must institute two different Suits for recovery of possession of each block. Plaintiffs did not validly terminate the tenancy. Original defendant continues to be the tenant. It was further contended that block No.1 was originally let out to the original defendant and block No.4 was let out to

Dr. M. A. Jaywant, the husband of the original defendant. Till the year 1957, plaintiffs used to issue separate rent bills in respect of the said premises. After the death of her husband, Dr. M. A. Jaywant in 1957, plaintiffs unilaterally and arbitrarily started issuing one rent bill in respect of blocks No.1 and 4, which was objected to by the original defendant. Original defendant denied change of user by contending that in block No.1 on the ground floor, a hospital is run from the very inception and the plaintiffs are fully aware of the said fact. Plaintiffs have waived their rights in respect of the alleged change of user. Block No.1 was and is being used for the same purpose since the time it was let out.

6. Original defendant denied that she has sublet block No.1 as alleged and that she is profiteering therefrom. Original defendant also denied that plaintiffs require the suit premises for their personal and bonafide requirement and that such a demand is totally malafide and baseless. Original defendant denied the alleged changed of user of residential premises into non-residential one and in any case, plaintiffs waived their right to sue on that ground and are estopped from raising that ground. Original defendant denied that she has kept the sub-tenant by name Dr. H. C. Merchant as alleged as also denied that she has been a source of nuisance to the plaintiffs and other tenants as alleged.

7. During the pendency of the Suit, original defendant died and her legal representatives were brought on record as defendants No.1(a) and 1(b). Defendants No.1(a) and 1(b) filed additional written statement dated 13.03.1992. Defendants No.1(a) and 1(b) adopted the point of defence / written statement filed by their deceased mother. Defendants No.1(a) and 1(b) filed additional written statement on or about January 1998.

8. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. Parties led oral as well as documentary evidence. The learned trial Judge dismissed the Suit on 24.12.1999. Aggrieved by that decision, plaintiffs preferred appeal No.426 of 2000. By order dated 08.04.2014, the appellate Court allowed the Appeal as indicated hereinabove. It is against this decision, defendants No.1(a) and 1(b) have instituted this Application under Section 115 of C.P.C.

9. In support of this Application, Mr. Godbole strenuously contended that the appellate Court has decreed the Suit under Section 13(1)(e) and Section 13(1)(g) of the Act. He submitted that in order to attract ground under Section 13(1)(e), plaintiffs have to establish that the tenant has, since the coming into operation of the Act, unlawfully sublet or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises or assigned or transferred in any manner his interest therein. In order to get decree of eviction under this Section, plaintiffs have to establish that defendants have given exclusive possession of block No.1 or exclusive possession of part of block No.1 and that the tenant has, since the coming into operation of the Act, unlawfully sublet or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, unlawfully given on licence, the whole or part of the premises. In the present case, plaintiffs have not established these ingredients so as to get decree under Section 13(1)(e) of the Act. He submitted that perusal of the evidence on record, and in particular evidence of D.W.1 would show that the say of the plaintiffs that her mother (original defendant) had sublet the premises to Dr. H. C. Merchant is not correct. Dr. Merchant was a Consulting Physician. He was allowed to use a portion of the front room of the block No.1 between 4 p.m. and 7 p.m. on week days to do his consulting work. Original defendant had put up a partition in the front room of block No.1. On one side of the said partition, Dr.

Merchant used to sit. There was a curtain on the other side and beyond that, there was one bed kept for examination of her mother's patients. The other rooms were used for the purpose of the hospital. During the morning hours, her mother used the portion, which was being used by Dr. Merchant between 4 p.m. and 7 p.m. They had provided Dr. Merchant a table and chair in the said portion and examination table was also given for his use. He was allowed to use X-ray View box of the hospital in the said room. Dr. Merchant was not having connection with the other portions of the hospital. In the cross-examination, she deposed that Dr. Merchant was paying Rs.100/- per month for being allowed to occupy the premises. She volunteered that Dr. Merchant was paying Rs.100/- per month for being allowed to used the portion of the front room of the hospital premises.

10. Relying upon her evidence, Mr. Godbole submitted that Dr. Merchant was in joint possession with the original defendant, that too for a limited period. In other words, he was not in exclusive possession of either block No.1 or part of block No.1. That apart, plaintiffs have also not established that original defendant was profiteering from unlawful subletting of block No.1. As the ingredients of Section 13(1)(e) of the Act are not fulfilled, the appellate Court was not justified in passing the decree.

11. As far as ground of bonafide requirement is concerned, perusal of the impugned order shows that plaintiffs restricted their requirement qua plaintiffs No.5 and 6. He submitted that flat on the third floor is in occupation of legal heirs of plaintiff No.2. Plaintiff No.2 expired during pendency of the Suit. Flat No.6 on the second floor is in possession of Mr. R. R. Karnik – plaintiff No.4. Plaintiff No.4 died during the pendency of the appeal and his legal heirs were brought on record. Plaintiff No.4 died leaving behind his son Prasad and daughter Rashmi. Daughter Rashmi is residing with her husband after marriage. Prasad, son of plaintiff No.4 is residing at Andheri. Wife of plaintiff No.4 has also expired. He submitted that there is no partition in the family of plaintiffs. Thus, flat No.6 on the

second floor is available to plaintiffs No.5 and 6.

12. Mr. Godbole submitted that plaintiff No.5 died leaving behind his widow Aruna and married daughter Yashodhara. Plaintiffs came with the case that wife of plaintiff No.5 is residing with her daughter Yashodhara and grandson Ayush and that husband of Yashodhara is employed in Muskat. Yashodhara is residing along with the plaintiffs No.5 and 6 and her son Ayush. Her husband comes every alternate month and resides at block No.5 for 15-20 days. He has intention to take up employment in Mumbai. He submitted that this is not a genuine case. In the family of plaintiff No.5, only his widow is staying in flat No.5. As far as requirement of plaintiff No.6 is concerned, he is residing along with his wife Vijaya and two daughters Monica and Varsha. Both the daughters are married and are residing with their respective husbands. Plaintiff No.6 and his wife Vijaya are staying in flat No.5. In short, Mr. Godbole submitted that in flat No.5, Aruna - widow of plaintiff No.5, plaintiff No.6 and his wife Vijaya are residing. Thus, only three members are residing in block No.5, which consists two bed-rooms, hall and kitchen. The said premises is sufficient to meet the requirements of plaintiffs No.5 and 6.

13. Mr. Godbole further submitted that in paragraph 44 of the impugned order, the appellate Court dealt with room No.3 in "Park View Annex" building. Plaintiffs had instituted Suit against the tenant Mr. Gadgil in respect of the said room on the ground of bonafide and reasonable requirement as also non-user. The Suit was decreed. As the tenant did not prefer appeal, the said room is available to the plaintiffs. Apart from room No.3, it is the case of the plaintiffs that room No.7 in the "Park View Annex" building was let out to Mr. Sharma in the year 1969-1970. However, the same was let out to Mr. Sharma during the pendency of the Suit. Thus, if at all the requirement today by the plaintiffs was reasonable and bonafide, they would not have let out room No.7 to Mr. Sharma during the pendency of the Suit.

14. Mr. Godbole further contended that two sitting rooms are available on the terrace of Park View. Plaintiffs No.5 and 6 can accommodate themselves in these two rooms. Thus, plaintiffs have sufficient premises in their possession. He also relied upon statement of Ms Aruna - wife of plaintiff No.5 recorded by Police at exhibit-50. In her statement, Ms Aruna stated that flat No.5 consists of two bedrooms and that block No.6 is in possession of plaintiffs No.5 and 6. He, therefore, submitted that the requirement of plaintiffs No.5 and 6 is neither reasonable nor bonafide. In any case, greater hardship will be caused to the defendants in case decree of eviction is passed against them. Assuming for the sake of arguments without conceding that plaintiffs have established their requirement, decree of partial eviction can be passed thereby permitting defendants to retain one of the blocks out of block No.1 on the ground floor and block No.4 on the first floor.

15. Mr. Godbole submitted that defendants have filed Civil Application No.382 of 2014 under Order 41, Rule 27 of the C.P.C. for leading additional evidence. They have also taken out C.A.No.383 of 2014 for amending the written statement in terms of the amendment set out in Schedule I to that application. He submitted that it is absolutely necessary to allow these applications by permitting defendants to amend the written statement and to bring on record documents which are absolutely necessary to decide the controversy between the parties. These documents go to the root of the matter and will indicate that one of the tenants namely Pradhan family had surrendered the possession of flat No.8 in Park View Annex building admeasuring about 350 sq.ft. to the landlords some time in the beginning of 2011. It will also indicate that the plaintiffs were not accepting rent from other tenant Mr. Bhide and the flat let out to Mr. Bhide is unused. Documents produced along with Civil Application No.382 will also indicate that flat No.7 on the first floor was let out to Mr. Sharma after filing of the Suit. For all these reasons, he submitted that application requires consideration.

16. On the other hand, Mr. Kadam supported the impugned order. He has taken me through the evidence adduced by the parties as also the findings recorded by the Courts below. In particular, he submitted that the appellate Court has considered the ground of reasonable and bonafide requirement under Section 13(1)(g) from paragraphs 23 to 55 and held that having regard to the number of members in the families of plaintiffs No.5 and 6, the requirement is, both, reasonable as well as bonafide. From paragraphs 56 to 71, the appellate Court considered the question of comparative hardship and held that the greater hardship will be caused to the plaintiffs in the event of refusal to pass decree of eviction. The appellate Court considered the ground of unlawful subletting under Section 13(1)(e) of the Act from paragraphs 72 to 92 and held that plaintiffs have made out ground of unlawful subletting. After appreciating the evidence on record, the appellate Court has held that the plaintiffs have established grounds under Sections 13(1)(g) and 13(1)(e) of the Act and accordingly, passed decree of eviction. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

17. As far as Civil Application No.383 of 2014 for amending the written statement and Civil Application No.382 of 2014 for leading additional evidence is concerned, respondent No.6 has filed affidavits denying the assertions made in the replies. He, therefore, submitted that no case is made out for allowing these applications and the same deserve to be dismissed.

18. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Court had dismissed the Suit. As against this, the appellate Court has decreed the Suit on two grounds under Sections 13(1)(g) and 13(1)(e) of the Act. It is, therefore, necessary to confine this discussion as to whether plaintiffs have made out a case under Sections 13(1)(g) and 13(1)(e) for evicting the defendants. As far as the

Civil Applications filed by the defendants, I will deal with these applications separately. As far as the ground of bonafide and reasonable requirement as contemplated by Section 13(1)(g) of the Act is concerned, in paragraph 3, plaintiffs have contended that they are the members of joint and undivided Hindu family and have been residing together. The accommodation which at present occupied by the plaintiffs consists of blocks No.5, 6 and terrace room in all admeasuring 2352 sq.ft. The total number of members of plaintiffs' family are 18 and the present accommodation is absolutely insufficient and they are compelled to stay together, which will cause great inconvenience and hardship to the plaintiffs. Plaintiffs further contended that the original defendant was in possession of two blocks having carpet area of 1634 sq.ft. and her family consists of three members. Plaintiffs, therefore, claim that they require the suit premises for their personal and bonafide requirement. In paragraph 7, the original defendant denied that the plaintiffs require suit premises for their personal and bonafide requirement and contended that such a demand is totally malafide and baseless. Plaintiffs have a large premises at their disposal and they can very easily accommodate themselves therein. In any event, original defendant will suffer greater hardship if the decree of eviction is passed against her whereby she will be deprived of not only her premises wherein her hospital is run (block No.1) but also the premises (block No.4 on the first floor) where she is residing. She further contended that the requirement of the plaintiffs is malafide. Suffice it to say at this stage is that original defendant did not specifically deny the assertion made by the plaintiffs that they are in possession of blocks No.5 and 6 and terrace room, which admeasures 2352 sq.ft. and that the total number of members of plaintiffs' family is 18 and the present accommodation is absolutely insufficient and they are compelled to stay together which causes great inconvenience and hardship to them.

19. Defendants have filed additional written statements on 13.03.1992 and January 1998. However, as far as the ground of bonafide requirement

under Section 13(1)(g) is concerned, in paragraph 4 of the additional written statement dated 13.03.1992, there is mere denial that plaintiffs require the premises bonafide and reasonably for their use and occupation and the plaintiffs' demand is absolutely malafide and unreasonable. It was further contended that that plaintiffs have sufficient and adequate premises in their possession for accommodating all their family members without specifying the premises in possession of the plaintiffs. As far as the other additional written statement of January 1998 is concerned, nothing is stated about the bonafide requirement, save and except, in paragraph 4, defendants asserted that the grounds of eviction set out in paragraph 4 are false and plaintiffs are not entitled to the reliefs claimed in the Suit.

20. In order to substantiate the claim, plaintiffs examined P.W.1 Hemchandra Ramchandra Karnik, P.W.2 Madhusudan R. Karnik and P.W.3 Chandraprakash Surajprakash Sharma. Defendants examined D.W.1 Dr. (Smt.) Usha Madhukar Samel, D.W.2 Tushar Vasant Dhote, photographer, D.W.3 Subhash Tukaram Patil, Constable attached to Shivaji Park Police Station, D.W.4 Girish B. Thite, Ward Inspector of Mumbai Municipal Corporation and D.W.5 Pandurang Motiram Vijaykar, Practising Advocate.

21. As noted earlier, the learned trial Judge dismissed the Suit. As against this, the appellate Court decreed the Suit under Sections 13(1)(g) and 13(1)(e) of the Act. As far as ground under Section 13(1)(g) is concerned, the appellate Court has dealt with this aspect from paragraph 23 onwards. In paragraph 24, the appellate Court observed that though the Suit is filed by all the co-owners, plaintiffs have pressed requirement of only plaintiffs No.5 and 6. The building where suit premises is situate consists of ground plus three floors. Two flats each are on the ground, first and second floor. On the third floor, there is one flat. Block No.1 on the ground floor is in possession of defendants. Another block on the ground floor is in possession of the other tenant. In block No.4, defendant No.1(b) Vijay Jaywant is residing along with his family. The other block on the

first floor is in possession of the tenant. Two flats namely blocks No.5 and 6 on the second floor and one flat on the third floor are in possession of the plaintiffs. Plaintiff No.2 - Chandrakant R. Karnik was in possession of flat on the third floor. He died leaving behind two sons namely plaintiff No.2(a) Nishikant and plaintiff No.2(b) Avinash. Plaintiff No.4 Ramakant R. Karnik was in possession of flat No.6 on the second floor. He died leaving behind widow Pushpa, son Prasad and daughter Rashmi. Plaintiff No.5 along with his family and plaintiff No.6 along with his family are residing in flat No.5 consisting of one bedroom, hall, kitchen and balconies on the second floor.

22. In paragraph 26, the appellate Court recorded that at the time of filing of the Suit, family of plaintiff No.5 Hemchandra R. Karnik consisted of himself, his wife Aruna and daughter Ms Yashodhara. Family of plaintiff No.6 – Madhusudan Karnik consisted of himself, wife Vijaya and two daughters Monia and Varsha. Thus, the family of plaintiff No.5 consisted of three members and family of plaintiff No.6 consisted of four members.

23. During the pendency of appeal, plaintiff No.5 Hemchandra died leaving behind widow Aruna and daughter Yashodhara. Yashodhara got married and is having one son by name Ayush. It was further observed that Yashodhara is residing along with her son Ayush and mother Aruna in flat No.5. Yashodhara's husband Santosh is presently at Muskat. He comes every alternate month and resides in block No.5 for 15-20 days. He has intention to take up employment in Mumbai and reside permanently in block No.5. Thus as on today, it can be safely concluded that Aruna along with her daughter Yashodhara and grandson Ayush are residing in flat No.5.

24. In paragraph 28, the appellate Court noted that two daughters of plaintiff No.6 are married and are residing with their respective husbands.

Plaintiff No.6 and his wife Vijaya are residing in flat No.5. Thus, in all 5 members are residing in flat No.5 consisting of one bedroom, hall, kitchen and balconies. In paragraph 32, the appellate Court observed that plaintiff No.2 Chandrakant expired during the pendency of the Suit leaving behind two sons, therefore, it cannot be said that flat on the third floor occupied by Chandrakant is available to plaintiffs No.5 and 6 for satisfying the requirement. In the same manner, flat No.6 on the second floor is in possession of legal heirs of plaintiff No.4 Ramchandra. Ramchandra died during the pendency of the appeal. Plaintiffs No.5 and 6, therefore, cannot occupy flat No.6 on the second floor. In paragraphs 33 and 34, the appellate Court observed that after considering the number of members in the family of plaintiffs No.5 and 6, the requirement set up by the plaintiffs cannot be termed as 'malafide requirement'. In paragraph 35, the appellate Court noted that D.W.1 Usha Samel admitted that plaintiffs No.5 and 6 are residing in flat No.5 along with their families.

25. The appellate Court also considered submissions advanced on behalf of the defendants about availability of room No.3 in paragraphs 44 to 46. In paragraph 45, the appellate Court noted that plaintiffs had offered room No.3 in Park View Annex building to the defendants. Defendants, however, flatly refused the said offer. As the defendants themselves have refused the same on the ground that it is not suitable, tenant cannot dictate to the plaintiffs to accommodate themselves in that single room. In paragraph 47, the appellate Court dealt with availability of room No.7 in the Park View Annex building and observed that defendants failed to prove that room No.7 was let out prior to institution of the Suit. Defendants did not produce any iota of evidence to substantiate the said fact. Even assuming that room No.7 was available, the Court cannot compel plaintiffs to scatter their family members in different premises that too the premises in different buildings. The appellate Court, therefore, observed that availability of room No.7 is also not sufficient to dismiss the Suit.

26. In paragraph 48, the appellate Court dealt with availability of two sitting rooms on the terrace. D.W.4 Girish Thite, Ward Inspector was examined to substantiate that on the terrace of the building, two sitting rooms were constructed. He deposed that construction cannot be put up without permission of the Corporation. After perusing the photograph exhibit-49, the appellate Court observed in paragraph 51 that the said rooms are not even in habitable condition. There is no iota of evidence to show that there is facility of W.C. and bathroom. The appellate Court, therefore, accepted that the requirement of the plaintiffs No.5 and 6 is both, reasonable as well as bonafide.

27. On the question of comparative hardship, the appellate Court noted that defendant No.1(a) was residing in the luxurious flat at Puskar Co-operative Housing Society till 12.12.2004. Thereafter, she sold the said flat. Apart from that, perusal of evidence of D.W.1 shows that she admitted that flat in Pushkar building was standing in her name. She produced share certificate, original sale deed, which were marked as exhibit-35 collectively. Perusal of her evidence further shows that flat No.1356 in building No.A-48 in M.I.G. Colony, Adarsh Nagar Co-operative Housing Society admeasuring about 850 sq.ft. to 900 sq.ft. was standing in the name of her husband Madhukar Samel from 1965 to 10.11.1990. On 30.10.1993 i.e. during the pendency of the Suit, the said flat was sold by D.W.1 by executing the sale deed in favour of Mr. G. R. Rathi. The appellate Court also considered financial status of defendant No.1(a) as also the fact that defendant No.1(b) did not step into the witness box to throw light on the question of comparative hardship. In paragraph 67, the appellate Court noted that defendant No.1(a) failed to prove that any attempt was made to search premises for the purpose of hospital or clinic. After considering the material on record, the appellate Court held that greater hardship will be caused to the plaintiffs in the event of refusal to pass eviction decree and that no hardship will be caused to the defendants in the event of passing of eviction decree. After considering the evidence on record, I do not find

that the appellate Court has committed any error in decreeing the Suit under Section 13(1)(g) of the Act.

28. That brings me to the ground of unlawful subletting. This aspect is considered from paragraphs 72 to 92. In paragraph 75, the appellate Court observed that in front of block No.1, partition was made. The very purpose of the partition was to give exclusive possession of that portion to Dr. H. C. Merchant. He was provided facilities like examination table. He was also not allowed to look after any other patients in the hospital. D.W.1 admitted that Dr. Merchant had no connection with other portions of the hospital. The admission coupled with the fact of partition indicated that the exclusive portion was allotted to Dr. H. C. Merchant. In paragraph 76, the appellate Court noted that D.W.1 admitted that Dr. Merchant was paying Rs.100/- per month for being allowed to occupy the premises, which shows that original defendant was taking consideration for the said user.

29. In paragraph 85, the appellate Court noted that plaintiffs specifically pleaded presence of Dr. H. C. Merchant in block No.1. However, this aspect was not dealt with in the written statement. It was observed in paragraph 87, defendants suppressed all the facts about presence of Dr. H. C. Merchant and came with explanation without pleading to that effect. After considering the evidence on record, the appellate Court concluded in paragraph 92 that the plaintiffs made out the ground of unlawful subletting.

30. After considering the evidence on record, I do not find that the appellate Court committed any error in decreeing the Suit. Defendants were not in a position to demonstrate that the findings recorded by the appellate Court are based on no evidence or that they are contrary to the evidence on record. Defendants were also not in a position to demonstrate that on the basis of evidence on record, no reasonable or prudent person would have reached the conclusions arrived at by the appellate Court. Merely because on the basis of evidence on record, another view is possible that itself is no ground for invocation of powers under Section 115 of C.P.C. No case is made out by the defendants for invocation of powers

under Section 115 of C.P.C. Application fails and the same is dismissed.

31. At this stage, Mr. Godbole orally applies for stay of this order for a period of ten weeks from today. He assures that the applicants and all adult family members will give usual undertaking in this Court within two weeks from today by giving advance copy to the other side. He further states that the daughter of applicant No.1 is mentally retarded and, therefore, on her behalf applicant No.1 as her guardian will give the undertaking.

32. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of 10 weeks from today subject to the applicants and all adult family members using block No.1 on the ground floor and residing in block No.4 on the first floor giving undertaking incorporating therein : (i) that they are in actual possession of the suit premises and nobody else is in possession; (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises; (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises; (iv) that they will pay the arrears of rent, if any, to the respondent within two weeks from today; and (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

33. As the daughter of applicant No.1 though major, is mentally retarded, on her behalf, applicant No.1 as her guardian will give undertaking in the aforesaid terms. It is made clear that in case the applicants do not furnish undertaking in the aforesaid terms and do not pay the rent to the respondents within two weeks from today, interim order shall stand vacated without further reference to the Court. List the application for compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)